

RESPONSE**A. Status of the Claims**

Claims 23-25 and 27-52 were pending at the time of the Action. Claims 23, 28, and 36 have been amended. Support for this amendment can be found throughout the specification, including, for example, at page 6, first paragraph. No new matter was added by these amendments. Claims 27 and 51 are canceled with the filing of this response. Claims 23-25, 28-50, and 52 will be pending after entry of this amendment.

B. The Rejections Under 35 U.S.C. § 112, First Paragraph

The only rejections raised in the Office Action mailed August 7, 2008, were the rejections of claims 23-25 and 27-52 for lack of enablement and lack of written description. The primary concern raised by the Examiner in both of these rejections appears to be that the claims encompass expression promoting fragments that function to enhance expression not as promoters, but rather in some undefined way (*see e.g.*, Action, p. 4, last paragraph). Current claim 23 clarifies that the nucleus-derived moss expression promoting region (MEPR) comprises a moss promoter. As explained in the specification, a person of ordinary skill in the art can determine the promoter activity of a fragment of SEQ ID NO: 13 by comparing its expression promoting activity with that of a known construction like a CaMV 35S construct (*see e.g.*, paragraph spanning pages 3-4; page 5, last paragraph; page 6, first paragraph). Accordingly, a person of ordinary skill in the art would understand that the inventors were in possession of the claimed subject matter at the time of filing. In addition, based on the teachings in the specification, a person of ordinary skill in the art could make and use the claimed invention without undue experimentation. Applicants, therefore, request the withdrawal of these rejections.

C. Interview Summary

Examiner Page left a voicemail message with Applicants' representative, Travis Wohlers, on July 17, 2008, in which Examiner Page proposed claim amendments that would place the case in condition for allowance. Dr. Wohlers spoke with Examiner Page by telephone on July 18, 2008, July 21, 2008, and July 28, 2008; no agreement was reached regarding the proposed claim amendments during these interviews, but Dr. Wohlers stated that he would contact his client to see if the proposed amendments were acceptable. Dr. Wohlers left a voicemail message with Examiner Page on August 4, 2008, stating that Applicants agreed to accept the Examiner's proposed claim amendments. This call was not returned by Examiner Page. Dr. Wohlers contacted Examiner Page again on August 22, 2008. Examiner Page indicated that he had sent out the final Office Action prior to receiving the voicemail message from Dr. Wohlers on August 4, 2008. Examiner Page indicated, however, that Applicants could file a response to the final Office Action to enter the agreed amendments, which should overcome all pending rejections. Applicants, therefore, are filing this response to the final Office Action to enter the claim amendments discussed and agreed to with the Examiner.

D. Conclusion

Applicants believe this paper places the claims in condition for allowance. Should the Examiner have any questions, comments, or suggestions relating to this case, the Examiner is invited to contact the undersigned Applicants' representative at (512) 536-5654.

Respectfully submitted,



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